

STATE OF UTAH
DIVISION OF WATER QUALITY
DEPARTMENT OF ENVIRONMENTAL QUALITY
SALT LAKE CITY, UTAH

FACT SHEET/STATEMENT OF BASIS

UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM, PESTICIDES GENERAL
PERMIT

Permit Number UTG-170000

Utah Division of Water Quality (DWQ), Utah Pollutant Discharge Elimination System (UPDES) Pesticide General Permit (PGP) for discharges from the application of pesticides on or near surface waters of the State of Utah.

INTRODUCTION AND BACKGROUND

The U.S. Environmental Protection Agency has traditionally regulated the application of pesticides, even those applied on or near water in the United States, through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

On November 27, 2006, the EPA issued a final rule clarifying two specific circumstances in which a National Pollutant Discharge Elimination System (NPDES) permit (UPDES permit in Utah) was not required to apply pesticides on or near water. The rule became effective on January 26, 2007.

On January 9, 2009, the Sixth Circuit vacated EPA's 2006 NPDES Pesticides Rule. The Court held that the Clean Water Act unambiguously includes "biological pesticides" and "chemical pesticides" with residuals within its definition of "pollutant". Chemical pesticide residuals are pollutants if they are discharged from a point source requiring an NPDES permit. Biological pesticides are always considered pollutants regardless of whether the application results in residuals and require an NPDES permit for all discharges from a point source.

The EPA subsequently requested a two-year stay, which was granted by the court. NPDES permits will be required for discharges to waters of the U.S., of biological pesticides, including chemical pesticides that cause over spray which lands on water, no later than April 9, 2011. In May, 2011 the EPA requested and was granted an additional stay from the Court extending the required NPDES pesticide permitting deadline to October 31, 2011.

APPROPRIATENESS OF THE GENERAL PERMIT

Utah Administrative Code (UAC) R317-8-2.5 authorizes the issuance of General Permits for categories of point sources within the same geographical area with discharges that are from

similar types of operations and wastes, and that require similar effluent limitations and monitoring. In addition, *Utah Administrative Code (UAC) R317-801* will specifically address the requirements of the Pesticide permitting program. The purpose of this permit is to maintain water quality standards, for large applications of pesticides and herbicides which may affect surface waters of the State. This permit is intended for operators who are primarily engaged in large commercial, or governmental or quasi-governmental organizations (operators) that use pesticides for the control of insects, weeds, and nuisance weeds near water ways, nuisance animals and canopy spraying. This PGP is not intended for small sized applicators like homeowners, small farmers or ranchers, or other industries that are not primarily engaged in the use of pesticides unless the thresholds for any of the four Use Pattern Categories are exceeded as described in "Pesticide Use Pattern Categories" below.

DEFINITION OF PESTICIDES

A pesticide is defined as any substance or mixture of substances intended for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals causing harm during or otherwise interfering with the production, processing, storage, transport or marketing of food, agricultural commodities, wood and wood products or animal feedstuffs, or substances which may be externally applied to animals for the control of insects, arachnids or other pests in or on their bodies. The term includes substances intended for use as a plant growth regulator, defoliant, desiccant or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport.

WHO MUST OBTAIN COVERAGE UNDER THE PGP

All qualifying groups of organizations (operators) described below involved in the discharge of pesticides on or near surface waters of the State, for any of the four Pesticide Use Pattern Categories listed below, who are in Operator Groups 1 or 2 below, or who are applying above the treatment thresholds listed in Table 1 for those in Operator Groups #3 (Other Operators) or #4 (Operators involved in a "Declared Emergency Pest Situation"), must obtain coverage for that activity under the PGP by submitting a Notice of Intent (NOI) (also known as an application form) to discharge. The NOI form for the PGP may be obtained by submitting an application from the following website page: <http://www.waterquality.utah.gov/>

In the unusual situation that the PGP may not adequately cover a specific discharge situation, the operator may be directed to apply for an individual UPDES discharge permit to obtain permit coverage.

Organizations (operators) involved in the application of pesticides which employ any person who

applies pesticides; or who is involved in the financing of pesticide applications, or anyone who makes decisions regarding the application of pesticides on or near surface waters of the State must apply for coverage under the PGP. Such organizations shall herein be referred to as "operators".

An example of which operators would need to obtain permit coverage and obtain an NOI, based on employee function, would be a mosquito abatement district (MAD) that has made the decision to apply pesticides to an area greater than 6,400 acres; and then hires an aerial applicator to treat the area with pesticides. Both of these operators would need to obtain PGP coverage because the MAD may have determined that it would be best to apply pesticides immediately according to integrated pest management practices (IPM) to achieve the highest rate of efficacy because the mosquitoes are in the larval stage. The aerial applicator would need to obtain a PGP because the aerial applicator would be calibrating the application nozzles and using best management practices when determining other factors such as airplane speed, wind speed and wind direction. Both of these entities are considered operators, and must obtain either a Pesticide General Permit or an individual pesticide permit under Utah's UPDES program, unless the operator can demonstrate to the Utah Department of Environmental Quality (DWEQ) that surface waters of the State will not be affected by the discharge of pesticides (including overspray).

PESTICIDE OPERATOR GROUPS

Operator Group 1) — All Operators involved in all discharges to Category 1 waters of the State - All operators involved in the discharge of pesticides on or near surface Waters of state, which have been determined by the Water Quality Board to be Category 1 Waters¹ (known as Tier 3 Waters in the Federal Permit), must submit a NOI which details each area and watershed where a discharge is to occur. Only pesticide applications which are made to restore or maintain water quality or to protect public health or the environment would be covered under this permit for discharges on or near Category 1 surface waters of the State. Projects covered under this permit are allowed in Category 1 Waters because pollution will be temporary and limited, and result only during the actual activity; and best management practices will be employed to minimize pollution effects. The NOI is to be submitted as detailed in "When to Submit an NOI" below.

¹Category 1 Waters are defined as "Waters of the State which are considered to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, and shall be maintained at existing high quality through designation, by the Board after a public hearing, as Category 1 Waters. All surface waters geographically located within the outer boundaries of U.S. National Forests are considered Category 1 Waters." For exceptions, please see *UAC R317-2-12*.

Operator Group 2) All Government or Quasi-Governmental Agencies or Special Service Districts - All government agencies (federal, state, county or local agencies and special service districts) who discharge pesticides under the conditions described above, as a primary purpose or as a significant activity in their operations, must submit an NOI on annual basis describing each area and watershed where a discharge is to occur regardless of the size of the area to be treated. Application for the NOI must be made as described in "When to Submit an NOI" below.

Operator Group 3) - Other Operators

Other operators engaged in the discharge of pesticides for the conditions described above as a primary purpose or as a significant activity in their operations, like private pest control companies, water supply or canal companies or other large operators whose discharges exceed the thresholds detailed in Table 1 below must apply for an NOI to obtain coverage under the PGP. Application for the NOI must be as detailed in "When to Submit an NOI" and Table 1 below.

Operator Group 4) - Operators involved in a "Declared Pest Emergency Situation"

All operators that otherwise aren't required to obtain an NOI, but become involved in a "declared pest emergency situation", and will exceed any of the treatment thresholds in Table 1 may discharge as required by the emergency but are required to obtain a NOI a maximum of 30 days after commencement of the discharge. A "Declared Pest Emergency Situation" is an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on a Significant risk to human health, or Significant economic loss, or Significant risk to: Endangered species, Threatened species, Beneficial organisms, or, the environment.

WHEN TO SUBMIT A Notice of Intent (NOI)

All operators will automatically be covered under the PGP for the first five-year permit term of October 31, 2011 to October 31, 2016 if they submit a NOI on or before February 15, 2012. To obtain PGP coverage for the second and all succeeding PGP five-year terms, all operators must submit a NOI on or before the expiration date (October 31) in the last year of the PGP five-year term. So the permit/NOI renewal date for the next five-year term of PGP coverage would be on, or before October 31, 2016. In the event that a discharge occurs before an NOI is obtained and after October 31, 2011, all qualified operators are required to be knowledgeable about, and conform to the PGP.

NOI Thresholds for Operator Group Nos. 3 and 4

Table 1 below details the annual thresholds above which the operators in Groups 3 and 4 must

obtain an NOI. The thresholds are based upon the total annual application area (total area that the applied pesticide is expected to have an effect) or the total length of stream or canal bank that will be annually treated.

Table 1 NOI Thresholds for Operator Group Nos. 3 and 4

Pesticide Use Pattern Category	Threshold
Insects and Other Insect Pests	> 6,400 acres
Weed and Algae Control	Miles > 100 ¹ Acres > 80
Nuisance Animals linear bank miles or acres	Miles > 100 ¹ Acres > 80
Canopy Spraying	Acres > 6,400

¹ The length of each side of a stream or canal bank that is to be treated must be added to the annual total length separately.

PESTICIDE USE PATTERN CATEGORIES

The following Pesticide Use Pattern Categories described below are the only ones for which qualified operators must submit an NOI for PGP coverage:

- a. Control of Mosquitoes and Other Insect Pests – to control public health/nuisance and other insect pests that may be present on or near standing or flowing surface water. Public health/nuisance and other insect pests in this use category include but are not limited to mosquitoes and black flies.
- b. Weed and Algae Control – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals.
- c. Nuisance Animal Control – to control invasive or other nuisance animals in water and at water's edge. Nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.
- d. Forest Canopy Pest Control – application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.

OTHER PERMIT CONDITIONS

Actual pesticide application discharges must be identified and described in the NOI to discharge. The *Executive Secretary* may deny coverage for such a discharge, under the PGP, and require coverage under an individual UPDES discharge permit due to site conditions specific to that application. The pesticide may not be applied when it cannot be appropriately contained to the site during inclement weather conditions such as wind and rain. A discharge under this permit must be compatible with the water quality standards of the stream discharged to. Discharges covered by this permit shall have no other pollutants, such as sanitary waste, no contact with hazardous waste from a hazardous waste site, or contamination from leaking chemical or fuel tanks. This permit does not cover or address toxic pollutants or other pollutants such as petroleum hydrocarbons, metals, acids, caustics, dissolved solids, sewage, nutrients, radiological contaminants, or other contaminants.

All applicators or Operators, whether or not falling into the use pattern categories above or meeting the minimum annual application thresholds above must conform to all applicable rules and regulations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

THE NOTICE OF INTENT (APPLICATION FORM)

The application process for a general permit is less burdensome than for an individual UPDES permit. *Utah Administrative Code R317-8-2.5(2)(b)1* and *R317-8-3* allows streamlining of the application process for general permits by using Notices of Intent (NOIs) for applications. NOIs require minimal information, no previous water quality monitoring data and can be filled out and submitted in a short period of time. The information required should be readily available to the prospective permittee if the project has been thoroughly and thoughtfully planned out.

Though the PGP is drafted to include most, if not all the commercial and industrial pesticide spraying projects, it is possible that a project is complicated with conditions or risks that are not clearly addressed by the PGP. For these cases the *Executive Secretary* may revoke or terminate PGP coverage (in accordance with *UAC R317-8-5.6* and *6.2*). In addition, the Executive Secretary may require any person authorized by this general permit to apply for and obtain an individual UPDES discharge permit.

THE UPDES PESTICIDE GENERAL PERMIT (PGP)

The UPDES PGP is divided into five parts: (Part I) Effluent Limitations and Monitoring Requirements, (Part II) Recording and Reporting, (Part III) Compliance Responsibilities, (Part IV) General Requirements Monitoring, (Part V) Definitions.

Technology Based Effluent Limitations

The technology-based effluent limitations set forth in Part I. of the PGP require the operator to optimize the discharge of pesticides to surface waters of the State. Consistent with the control level requirements of the CWA, the term “optimize” means to reduce and/or eliminate pesticide discharges to surface waters of the State through the use of control measures to the extent technologically available and economically achievable and practicable for the category or class of point sources covered under this permit, taking into account any unique factors relating to the operators to be covered under the permit. This part states operators must optimize discharges of pesticides by using the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest taking into account pest resistance concerns, perform regular maintenance activities, calibrate and clean/repair application equipment. This part also requires certain operators to implement additional Integrated Pest Management (IPM) Practices which involve the following: (1) identifying and assessing the pest problem; (2) assessing effective pest management; and (3) following specified procedures for pesticide application (see Part I.F. of PGP).

Water Quality Based Effluent Limitations

In addition to the technology-based effluent limitations, Part I.G. of the PGP contains the water-quality-based effluent limitations. The operator must control its discharge as necessary to meet applicable water quality standards. Any discharge that results in an excursion of any applicable numeric or narrative water quality standard is prohibited. In addition to having to meet the requirements of FIFRA, DWQ expects that compliance with the technology-based effluent limitations and other terms and conditions in this permit will meet applicable water quality-based effluent limitations. However, if at any time the operator, or DWQ, determines that the discharge causes or contributes to an excursion of applicable water quality standards, the operator must take corrective actions as required, to document and report the excursion(s) to DWQ as required in Part II. B. Furthermore, consistent with Part I.E., DWQ may impose additional water quality-based limitations on a site-specific basis, or require the operator to obtain coverage under an individual UPDES discharge permit. If information in an NOI, required reports, or from other sources indicates that, after meeting the technology-based limitations in this permit, the discharges are not controlled as necessary to meet applicable water quality standards the individual UPDES permit may be required.

No Pesticide Discharge allowed to Pesticide Impaired Waters

Eligibility requirements for coverage under this permit do not cover discharges of any pesticide into water that is impaired for that pesticide. While not specifically framed as effluent limitations, these eligibility conditions further help to protect water quality on a water-body-specific basis.

PESTICIDE DISCHARGE MANAGEMENT PLAN (PDMP)

Distinct from the technology-based or water quality-based effluent limitation provisions in the permit, Part I.H. of the permit requires all operators that exceed any annual treatment area threshold to prepare a PDMP to document the implementation of inspections, maintenance, monitoring, corrective action and control measures being used to comply with the effluent limitations set forth in Part I. of the permit. In general, Part I. H. requires that the following to be documented in the PDMP: (1) pesticide discharge management team information; (2) pest management area description; (3) control measure description; (4) schedules and procedures pertaining to control measures used to comply with the effluent limitations in Part I. The application rate and frequency, spill prevention, pesticide application equipment, pest surveillance, and assessing environmental conditions pertaining to other actions necessary to optimize discharges (e.g., spill response procedures, adverse incident response procedures, and pesticide monitoring schedules and procedures); and (5) documentation to support eligibility considerations under other State laws. The PDMP must be kept up-to-date and modified whenever necessary to document any corrective actions as necessary to meet the effluent limitations in this permit. The requirement to prepare a PDMP is not an effluent limitation because it does not restrict quantities, rates, and concentrations of constituents that are discharged, including conditions on data and information collection, reporting, and such other requirements as the operator deems appropriate.

The PDMP requirements set forth in the permit are terms or conditions under the CWA because the operator is documenting information on how it is complying with the effluent limitations (and inspection and evaluation requirements) contained elsewhere in the permit. Thus, the requirement to develop a PDMP and keep it updated is no different than other information collection conditions, as in other UPDES permits. Failure to have a PDMP, where required, is a violation of the permit. While Part I. of the permit requires the operator to select control measures to meet the effluent limitations in this permit, the control measures themselves described in the PDMP are not effluent limitations because the permit does not impose on the operator the obligation to comply with the PDMP; rather, the permit imposes on the operator the obligation to optimize the effluent limitations prescribed in Part I.E.1., and Part I. F. 1., to maximize efficacy. Therefore, the operator is free to change as appropriate the control measures used to meet the effluent limitations contained in the permit. This flexibility helps ensure that the operator is able to adjust its practices as necessary to ensure continued compliance with the permit's effluent limitations. However, the permit also contains a recordkeeping condition that requires that the PDMP be updated with any such changes in the operator's practices under Part I. I. (Pesticide Discharge Management Plan Modifications). Thus, if an operator's on-the-ground practices differ from what is in the PDMP, this would constitute a violation of the permit's recordkeeping requirement to keep the PDMP up-to-date, and not, per-se, a violation of the permit's effluent limitations, which are distinct from the PDMP. DWQ recognizes, however, that

because the PDMP documents how the operator is meeting the effluent limitations contained in the permit, not following through with actions identified by the operator in the PDMP, as the method of complying with the effluent limitations in the permit, is relevant to evaluating whether the operator is complying with the permit's effluent limitations.

PGP REPORTING REQUIREMENTS

The UPDES PGP does not require permittees to submit an annual report. The DWQ does not believe annual reporting is necessary and will create undue burden to the permittees, and will not provide any real value to the environment or the DWQ. This permit will require the permittees to immediately report and keep records of all leaks, spills, fish kills ("adverse incidents") or any other violation of FIFRA label directions within 24-hours, and submit a written report within 5 days. If any of these adverse incidents occur, the permittee will be required to submit an annual report at the end of the calendar year, detailing why the adverse incident occurred, and what corrective was taken to avoid another adverse incident in the future.

STORM WATER AND BEST MANAGEMENT PRACTICES

A stormwater provision is included in the permit. The permit may be reopened and modified to include any applicable storm water provisions and requirements if necessary.

PERMIT DURATION

It is the intention to issue the PGP for the duration of five years, with collection of the permit fees annually for those five years.

Drafted by Mark Schmitz, Environmental Scientist and
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Utah Division of Water Quality
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PUBLIC NOTICE

Began: March 4, 2011

Ended: April 4, 2011

Public Noticed in The Salt Lake Tribune and Deseret News

Comments: One comment was received from the BLM. Please see the attached response.

Signed this 21st day of October, 2011.


Mark Schmitz, Environmental Scientist